* * * * *

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition for a writ of certiorari should be granted.

Respectfully submitted.

PAUL D. CLEMENT
Acting Solicitor General

JUNE 2005

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given the "facts the district court, in the light most favorable to the nonmoving party, likely assumed," the challenged conduct violated clearly established law. *Ibid.* (quoting *Johnson* v. *Jones*, 515 U.S. 304, 319 (1995)). As the court of appeals explained, that purely legal question "fall[s] squarely within the collateral order doctrine." Pet. App. 9a.

Respondent also contends that, given the district court's denial of summary judgment on his Federal Tort Claims Act claim against the United States, "a trial centering around [p]etitioners' conduct is all but inevitable," and thus granting them qualified immunity will not protect them from the burdens of trial. Br. in Opp. 22 n.8. But there is a vast difference between being a defendant and being a witness, and the fact that petitioners may have to be witnesses obviously does not disentitle them to the protections afforded by qualified immunity from the far more onerous burdens of being defendants. Cf. *Behrens*, 516 U.S. at 311 (rejecting claim that "no appeal is available where, even if the District Court's [no-]qualified-immunity ruling is reversed, the defendant will be required to endure discovery and trial on matters separate from the claims against which immunity was asserted").

(9)

Supreme Court, U.S.
FILED
AUG 26 2005
OFFICE OF THE CLERK

No. 04-1495

In the Supreme Court of the United States

MICHAEL HARTMAN, ET AL., PETITIONERS

v.

WILLIAM G. MOORE, JR.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

(VOLUME 1)

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PETITION FOR A WRIT OF CERTIORARI FILED: MAY 9, 2005
CERTIORARI GRANTED: JUNE 27, 2005

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

No. 3:91-cv-02491

WILLIAM G. MOORE, JR., ET AL., PLAINTIFFS

v.

JOSEPH B. VALDER, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
11/19/1991	1	COMPLAINT filed; Filing Fee $120.00 Receipt # 40410 (15+) (cle) (Entered: 11/21/1991)
		* * * * *
02/19/1992	26	MOTION by Joseph B Valder, Michael Hartman, Frank Korman, Pierce McIntosh, Robert Edwards, Unknown Robbins, Daniel Harrington to dismiss. (3) (cxb) (Entered: 02/25/1992)
02/19/1992	27	MEMORANDUM by Joseph B Valder, Michael Hartman, Frank Korman, Pierce McIntosh, Robert Edwards, Un

DATE	DOCKET NUMBER	PROCEEDINGS
		known Robbins, Daniel Harrington in support of [26-1] motion to dismiss. (15+) (cxb) (Entered: 02/25/1992)
		* * * * *
04/14/1992	42	BRIEF/MEMORANDUM by Blanche K Moore, William G Moore Jr in opposition to [26-1] motion to dismiss. (15+) (RECEIVED APPENDIX, 2 volumes, 15+, under separate cover) (cxb) (Entered: 04/15/1992)
		* * * * *
05/08/1992	47	REPLY MEMORANDUM by USA, John Does 1-25, Unknown Robbins, Daniel Harrington, Pierce McIntosh, Robert Edwards, Frank Korman, Michael Hartman, Joseph B Valder to response to [26-1] motion to dismiss. (15+) (cxb) (Entered: 05/12/1992)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
05/27/1992	50	SUR-REPLY by Blanche K Moore, William G Moore Jr to reply to response to [26-1] motion to dismiss. (15+) (cxb) (Entered: 05/28/1992)
		* * * * *
09/21/1992	55	MEMORANDUM ORDER granting in part, denying in part [26-1] motion to dismiss . . . that defts' motion to dismiss all constitutional claims brought by Mrs. Moore against the defts is GRANTED; their mtn to dismiss Moore's constitutional claims against Valder is GRANTED; their mtn to dismiss Moore's constitutional claims against Hartman, Korman, Edwards, McIntosh, Harrington, Robbins & other unnamed defts is GRANTED as to the fifth amendment/due process & fair & impartial grand jury claims but is DENIED as to the malicious prosecution and first amendment claims; & their mtn to

DATE	DOCKET NUMBER	PROCEEDINGS
		dismiss for want of personal jurisdiction will be denied in favor of transfer to the District of Columbia . . . accordingly, all claims are transferred to the district of Columbia. (See order for specifics) (signed by AJF) Copies to counsel: 9/21/92 Page(s): 15 (grj) (Entered: 09/22/1992)

* * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 1:92-cv-02288-RMU

WILLIAM G. MOORE, JR., ET AL., PLAINTIFFS

v.

MICHAEL HARTMAN, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
10/09/1992	1	ORIGINAL FILE, certified copy of transfer order and docket sheet received from USDC Northern District of Texas, Dallas Division (3-91 CV2491-G); volumes (4) (dot) (Entered: 10/13/1992)
	* * * * *	
11/30/1992	25	MOTION filed by defendant USA to dismiss for lack of jurisdiction; exhibits (3) (dot) (Entered: 12/01/1992)
	* * * * *	

DATE	DOCKET NUMBER	PROCEEDINGS
12/14/1992	28	RESPONSE by plaintiff(s) WILLIAM G. MOORE JR., plaintiff(s) BLANCHE K. MOORE in opposition to motion to dismiss for lack of jurisdiction [25-1] by USA; Exhibits (2) (dcn) (Entered: 12/15/1992)
		* * * * *
12/21/1992	32	REPLY by defendant USA in support of motion to dismiss for lack of jurisdiction [25-1] by USA (cjp) (Entered: 12/24/1992)
		* * * * *
03/03/1993	38	STIPULATED ORDER by Judge Norma H. Johnson: consolidating cases (N) (lpp) (Entered: 03/08/1993)
		* * * * *
07/29/1993	43	MOTION filed by defendant in 1:92-cv-02288 to dismiss the inspector defendants (Michael Hartman, Frank Korman, Robert Edwards, Pierce McIntosh, Daniel Harrington and Norman Robbins) (lpp) (Entered: 07/30/1993)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
08/20/1993	45	RESPONSE by plaintiffs BLANCHE K. MOORE in 1:92-cv-02288, and WILLIAM G. MOORE JR. in 1:92-cv-02288 in opposition to motion to dismiss the inspector defendants (Michael Hartman, Frank Korman, Robert Edwards, Pierce McIntosh, Daniel Harrington and Norman Robbins) [43-1] by USA. (bm) (Entered: 08/25/1993)
		* * * * *
09/03/1993	48	REPLY by postal inspector defendants in 1:92-cv-02288, in support of motion to dismiss the inspector defendants (Michael Hartman, Frank Korman, Robert Edwards, Pierce McIntosh, Daniel Harrington and Norman Robbins) [43-1] by USA (bm) (Entered: 09/07/1993)
09/24/1993	49	MEMORANDUM OPINION by Judge Norma H. Johnson (N) (ab) (Entered: 09/28/1993)

DATE	DOCKET NUMBER	PROCEEDINGS
09/24/1993	50	ORDER by Judge Norma H. Johnson: granting motion to dismiss for lack of jurisdiction [25-1] by USA in 1:92-cv-02288, 1:93-00324; granting motion to dismiss the inspector defendants (Michael Hartman, Frank Korman, Robert Edwards, Pierce McIntosh, Daniel Harrington and Norman Robbins) [43-1] by USA in 1:92-cv-02288; denying as moot all other pending motions in these consolidated cases; dismissing these consolidated cases (N) (ab) Modified on 09/28/1993 (Entered: 09/28/1993)
10/22/1993	51	NOTICE OF APPEAL by plaintiff(s) WILLIAM G. MOORE JR. from order dismissing [50-1], order [50-2], entered on: 9/28/93.; $5.00 filing fee and $100.00 docketing fee paid; copies mailed to James E. Anklam, Esq., Richard Montague, Esq, Matthew T. Fricker, Esq. (dmb) (Entered: 10/27/1993)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
03/07/1996	52	CERTIFIED COPY of judgment filed in USCA dated 9/22/95, on appeal [51-1], affirming the judgment of USDC in part., and reversing the judgment of USDC in part, and remanding for further proceedings in part. OPINION USCA # 93-5341 (cjp) (Entered: 03/07/1996)
		* * * * *
04/24/1996	56	SUGGESTION OF DEATH of defendant DANIEL HARRINGTON. . (JMF) (Entered: 04/26/1996)
		* * * * *
05/20/1996	63	ANSWER TO COMPLAINT by defendant FRANK KORMAN. (adc) (Entered: 05/28/1996)
		* * * * *
05/20/1996	65	ANSWER TO COMPLAINT by defendant MICHAEL HARTMAN. (adc) (Entered: 05/28/1996)
05/20/1996	66	ANSWER TO COMPLAINT by defendant ROBERT EDWARDS. (adc) (Entered: 05/28/1996)